EXHIBIT N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION
CAUSE NO. 4:13-cv-00800-SCR

MARY BAYES and PHILIP BAYES,)
)
Plaintiffs,)
)
)
-vs-)
)
BIOMET, INC., BIOMET)
ORTHOPEDICS, LLC, BIOMET U.S.)
RECONSTRUCTION, LLC, BIOMET)
MANUFACTURING, LLC, f/k/a BIOMET)
MANUFACTURING CORP.,)
)
Defendants.)

ZOOM VIDEOCONFERENCE VIDEOTAPED
DEPOSITION OF MARI S. TRUMAN

The deposition upon oral examination of MARI S. TRUMAN, a witness produced and sworn electronically via Zoom Videoconference before, Tracy Larimore, RPR, Notary Public in and for the County of Allen, State of Indiana, taken on behalf of the Defendants, at the location of the witness, 221 N. Union Street, Warsaw, Indiana, on the 19th day of May, 2020, scheduled to commence at 10:00 a.m. pursuant to the Federal Rules of Civil Procedure 30(b)(4) and In Re: Judge Clark's Case-Management Procedures Due to Covid-19 Response with written notice as to time and place thereof.

APPEARANCES (VIA ZOOM)

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THE VIDEOGRAPHER: Steve Troncone

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VIDEOGRAPHER: We are now on the video record. Today is May 19th, 2020. The time is approximately 10:04 a.m.

Will you please raise your right hand to be sworn for the record? And I believe she has a statement to make.

COURT REPORTER: I'm Tracy Larimore, court reporter in Fort Wayne, Indiana, and I just want to get a stipulation on the record that it is okay with all counsel present that I swear the witness via Zoom.

MR. SCHANKER: This is Darin Schanker and I represent Mary Bayes, and I have no objection to you swearing in the witness via Zoom.

MS. BUSBY: This is Adrienne Busby --

MR. WOOL: Zachary Wool for the plaintiff.

MS. BUSBY: Go ahead, Zachary.

MR. WOOL: Zachary Wool for the plaintiff. I have no objection.

MS. SULKIN: Melanie Sulkin for the plaintiffs, Mary and Philip Bayes, I have no objection.

MS. BUSBY: Adrienne Busby, Faegre Drinker for the Biomet defendants. I have no objection.

COURT REPORTER: Ma'am, if you --

before the fusion and after the fusion, you can then keep track of the change, but I hadn't seen that in this particular case.
Q Okay. Because that's not an analysis that you were able to undertake?
A Right, not with the information I had.
Q Okay. Looking at the reports that the -- the paragraph that we had been talking about, that is marked with the little "i", it starts on Page 1, carries over to Page 2, your first full sentence that begins, "Wear debris"; do you see that sentence, ma'am?
A Yes.
Q Okay. There's a parenthetical there and I want to -- we've been talking about the whole sentence, but I want to talk about the parenthetical. You say here, "And potentially head taper adapter interface in the left hip." What does that parenthetical mean?
A That means that we didn't have the left hip to take out and you can -- you have a cobalt-chrome titanium interface, and you can get a metallosis reaction from cobalt-chrome titanium tapers. And without looking at the device, given all of the other aspects of this case, I couldn't rule

in or rule out that that could, it could have -- it could be something that would play a role. And you'd actually have to have the device and section it and see what kind of -- what was going on in that interface.
Q Okay. So just to be clear, because you didn't have the device and you couldn't section it and see what was going on in that interface, you are not able to conclude to a reasonable degree of scientific certainty whether there was taper corrosion in that left hip; correct?
MR. SCHANKER: Object to form.
A Okay. There's taper corrosion and taper corrosion. What I'm not able to conclude is that there's any significant amount of taper corrosion. Most likely there's some taper corrosion, because there's going to be a crust, because it's not going to have been a perfect fit, there's going to be some fluid that gets in there, it's going to -- it's titanium. It oxidizes well. Oxidation. If there's any motion at all, there's going to be a little bit, a little bit of corrosion. I just can't tell you that it's a significant amount or clinically significant amount.

Q Okay. And so you would agree with me that all modular devices have the potential to corrode; correct?
MR. SCHANKER: Objection. Form.
A There is potential for corrosion at anywhere where you have a metal-metal interface where there's some motion, especially if there's a little crevice. There's, there's potential for that mechanically assisted crevice corrosion situation on any of the modular components with taper interfaces and other, and other metal-metal interfaces have that risk, yes.
Q Okay. And that's not specific to devices that have a metal-on-metal articulation; correct?
MR. SCHANKER: Objection. Form.
A That is correct. And the only thing that I've stated relative to the metal-on-metal articulations is that because we have the cobalt-chromium debris, which then ionizes into cobalt ions very quickly and if you get a -- if you get an inflammatory response, and I do believe that there was some inflamed synovium even in Ms. Bayes' right hip, when you get an inflammatory response, that -- those reactive oxygen CCs that, that are there increase the

corrosion at -- specifically at a cobalt interface, so that that is -- that when you have metal-on-metal and you've got metal ions and you've got these -- especially these chrom- -- cobalt and chromium ions that are in the area, you're more likely to get the taper corrosion. So it's just an exacerbating factor, basically.
Q Okay. So I think we can agree that the potential for corrosion at metal-metal modular interfaces is not specific to metal-on-metal devices; correct?
MR. SCHANKER: Objection. Form.
A That is, that is correct.
Q And corrosion at modular interfaces, when it happens, is not always clinically significant to the patient; correct?
MR. SCHANKER: Objection. Form.
A Correct. Like I said, corrosion -- and it depends on the material coupled and what are the effects, and in some patients, there is a large effect and some there is not. I mentioned -- it's not applicable in this case, but I did mention because I didn't go into as much in the, the MDL. The original report was about a clinical cold welding, which is when the

certainty about the angles of this cup at any particular time?

MR. SCHANKER: Objection. Form.

A What I'm going to say is that when you look at these, you can see that in 2008, they -- the cup angles were lower and there's a slight difference between the right and left. Then you go to 2010, the cup angles are higher and there's a bigger difference between the right and left. That, you can see on the x-rays that I have. Again, assuming -- we know that there's some error in the x-rays, in their orientation and all, but I can say we can say that happened, but I'm not going to give you exact angles. I'm going to defer to Dr. Lux and the orthopedic people in this case for the exact angles.

Q Okay.

MS. BUSBY: Very good. Let's go ahead and take a break.

VIDEOGRAPHER: One moment. Okay. We are off the video record.

(A short recess was had.)

VIDEOGRAPHER: We are back on the video record.

BY MS. BUSBY:

Q Ms. Truman, you are still under oath, you recall -- same as you swore this morning --

A Yes.

Q -- correct?

A Correct.

Q And you have no, no, currently, open lines of communication? No texts, no email, no telephone, nothing with anyone while we're on this deposition session; correct?

MR. SCHANKER: Objection. Form.

A Correct.

Q Okay. Are you able to -- now, having to reboot your computer, are you able to access the Exhibit Share website again?

A Yeah. It's already up and going. I'm -- it's ready to go. Whichever you want me to look at.

Q Okay. And could you please look at Exhibit 13, which is the EBRA analysis --

A Uh-oh. My mouse locked again.

VIDEOGRAPHER: Let's go off the record because she's frozen. One moment.

Off the record.

(A short recess was had.)

VIDEOGRAPHER: Okay. We are back on the video record.

BY MS. BUSBY:

Q Okay. Ms. Truman, welcome back. I think we've solved our technological issues, and you've got a little bit of different scenery behind you now.

You remember that you are still under oath; correct?

A I do. Yes.

Q Okay. And you have the same materials we talked about, the notebook containing your report, available to you if you want to refer to it?

A Right. I have the notebook here, and then I left your other papers at the other desk, because we weren't using them. And then I've got the exhibits in front of me on the computer.

Q Okay. That is great.

And just to confirm what we talked about before, you don't have any live text chatting or email chats or anything like that going right now; correct?

A That is correct.

Q Okay. Ma'am, just a couple of cleanups from the conversation we were having that I neglected to ask you. We focused our discussion mainly on the left hip.

With respect to Ms. Bayes' right hip, do you hold the opinion, to a reasonable degree of scientific and engineering certainty, that there was clinically significant taper corrosion in the right hip?

MR. SCHANKER: Objection. Form.

A I -- actually, the answer is similar. There -- first, there -- we don't know because we didn't take it apart, and so I don't know that that was any worse than, than the cobalt coming from the head. I think most likely it was from the head. Again, without taking the taper apart destructively, we can't tell.

Q Okay. And you did not conduct any tests on that right hip device to determine whether the debris on the device was actually corrosion debris; correct?

A Well, it depends on which taper you're talking about. I did not do a -- an analysis. In other words, I didn't -- we didn't have -- I didn't have OIC use their scanning electron microscope and -- with the E-, EDX to go through and determine what constitutes the, the material we saw at the surface perimeter.

So we have two tapers. We have the little

taper that you could see into that looked like a lot of biologic debris, most of the same surface finish, probably some little bits of corrosion. I didn't have them go in and measure that. It does not -- that particular taper didn't look to have a significant amount of damage, which is -- which I would concur with that.

Most of the tapers, even when there's massive corrosion, don't have significant amounts of material loss, but they do have a lot of damage. This one didn't have a lot of damage. And it was able to be removed. So it didn't -- even if it had, which I'm sure it had some corrosion, it wasn't a clinically significant amount at the taper, that high taper that we could see.

The other taper, we didn't -- we'd have to take it apart to see what was on the inside. And I did not have somebody go all the way around the outside to document with what we saw visibly there, was that a corrosion product or was that, or was that a biologic material.

Q Without using an SEM, are you able to determine visually whether you're seeing corrosion byproduct or a biologic material on an explant?

MR. SCHANKER: Objection. Form.

A It depends on what explant you're talking about and where we're at. In other words, you can see corrosion damage that you can tell like the imprinting inside of heads when you have a cobalt-chrome head, you can tell that that's corrosion damage and that that's significant corrosion going on. But as far as it -- what is that element? Is it, is it an oxide? What is it an oxide of? You can't tell without using SEM exactly what the elements on the surface are, but you can see evidence of corrosion damage.

And then the debris, the biologic debris, no, I, I -- just by looking, I mean, unless it's clearly a glob of something biologic, like a big glob of, looked like dried blood, you wouldn't expect that to be. So there's, there's some, some things you can tell a little bit and the rest, no, you can't tell exactly.

Q Okay. And just so that we're clear, you didn't ask OIC to undertake that analysis with respect to the right hip, and you did not undertake that analysis with respect to the right hip; correct?

A You are correct on both counts.

Q Okay. And I think you also told me that, you mentioned clinical cold welding. And in, a couple times in your report, I see "CCW" in all caps. When I see that in your report, does that refer to clinical cold welding?

A Yes. And that's basically saying that the -- that there's so much corrosion that you could not get them to disassociate, basically.

Q And for those among us who are not engineers, disassociate means pull apart; right? You can't take them apart?

A That's correct. Right. You can't take them apart, correct.

Q Okay. And that -- and clinical cold welding did not happen in either the left or the right hip for Ms. Bayes; correct?

MR. SCHANKER: Objection. Form.

A That is correct. That's correct. So the -- so that discussion actually does not apply to Ms. Bayes.

Q Okay. Very good. That trims things down.

Ma'am, could you take a look at Exhibit 13, which we have published to you in the marked exhibit folder? Do you have that up?

A It is thinking.

Q Okay. Okay. Let me know when it's there.

A I wonder if it has pictures. It might be kind of big. I don't know. It's taking a while.

Q Well, while it loads up, let me, let me ask you a couple preliminary questions that we may have covered, but we took kind of a lengthy break, and I want to make sure that, that I've got this right.

So you saw Dr. Kurtz's deposition, but you did not have an opportunity to review his exhibits; is that correct?

A That is correct.

Q Okay. Were you able to see, at any time, the, the documents that includes all of the x-ray analyses that formed the basis of Dr. Kurtz's EBRA opinions?

A No. I just saw what was in the report. So I did -- in fact, I cannot -- now I can see -- here -- I do recall there was some discussion that there were more x-rays looked at in his deposition and I do -- that document is open and I can scroll through it now, just so you know.

Q Okay. If you have not seen this document before and you'd like to scroll through and take a look and familiarize yourself with it, you're welcome

offer any opinions critical of the design of the Magnum taper adaptor; correct?
MR. SCHANKER: Objection. Form.
A I think the only thing that I did discuss was probably something about the testing, that there was not significant testing of the corrosion of that. I did note that there was some. So that would be -- without going through and reading the report again, that's what I recall talking about, as I sit here.
Q Okay. Let's take a look at Finding 9B. Finding 9B relates to assembly instructions and tools to assure adequate impaction force for multi-modular Magnum head and stem tapered junctions. Again, this is not an opinion that was included in your MDL report or about which you testified; correct?
A That is correct.
Q So this is also a new common issue opinion?
A It is, in general, yes, or common.
Q Okay. And then we move along to -- well, let me back up again and, frankly, because we don't -- you don't hold the opinion that there was clinically significant taper corrosion or clinical cold welding with Ms. Bayes' case, this

finding at 9B isn't relevant to Ms. Bayes' at all; correct?
A Yeah. In general, Finding 9A and B, given that -- given the fact that we didn't take apart the taper, really, it's saying that through the analysis, I have the critiques, but they're really -- I don't have evidence to, to, to say that that was a part of her failures.
Q Okay. And then Finding Number 10, that's basically adopting and incorporating the common issue opinions that you've already provided; correct?
A It is.
Q Okay. I do, ma'am, have some other questions, including questions related to the retrieval analysis of this device, but I feel the need to go ahead and make the record now.
MS. BUSBY: The opportunity to provide common issue opinions has expired in these remanded cases. They've been subjected to depositions and to Daubert motions, which have been ruled on. So I'll make a formal motion to strike any common issue opinions that have not been properly and timely disclosed in the MDL. And I will also state that, you know, Counsel, I

know you're going to have your objections and it's probably something that we will need to deal with off the record. I'm not going to question Ms. Truman on new common issue opinions right now. I don't think it's appropriate to require my client to expend the resources to do that, for inappropriately disclosed opinions.
So if the Court decides that these are appropriate, then I'll reserve the right to come back and question on them, but I'm not going to do that right now.
So Counsel, if you wish to respond to that on the record, you're welcome to; otherwise, we can take it up off the record.
MR. WOOL: Darin may have dropped off, Adrienne. Your comments are noted, some of them disagreed with, some of the characterizations as to what's appropriate and what's not.
And why don't we take a break? I'm not sure what happened to Darin.
MS. BUSBY: Yeah. I want to make sure that he's back, but we'll go ahead -- and if we can make this a short break. We have some time left under the Federal rule, but it is quite late and it's been a long day for Ms. Truman and everyone

else, and I'd like to get back on the record and wrap this up as quickly as we can.
MR. WOOL: Sure.
MS. BUSBY: Okay? Zach, is it -- with your permission, can we go off the record?
MR. WOOL: Sure. And Steve, once we're off, if you can just tell us how much time is left.
VIDEOGRAPHER: Sure. We are off the record.
(A short recess was taken.)
VIDEOGRAPHER: We are back on the video record.
BY MS. BUSBY:
Q Okay. Ms. Truman, you're still under oath as you recall; right? You may be muted.
A Uh-oh. Can you hear me?
Q I can, I can hear you now.
Just to confirm, you, you are still under the oath you swore this morning, Ms. Truman; correct?
A Correct.
Q And you have no current open lines of communication, text, email, carrier pigeon, with anyone while we are on the record; correct?